

ATTACHMENT G

APPENDIX B

GENERAL TERMS AND CONDITIONS

FOR

SOLAR DECATHLON (SPECIAL)

07/06/2011

Subcontractor is hereby placed on notice that the contracting party to this subcontract is the Alliance for Sustainable Energy, LLC, in its capacity as the Managing and Operating Contractor for the National Renewable Energy Laboratory (NREL) under the U.S. Department of Energy Contract No. DE-AC36-08GO28308. All references to "NREL" in this subcontract shall mean the Alliance for Sustainable Energy, LLC.

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CLAUSE 1. ASSIGNMENT OR TRANSFER (SPECIAL) (OCT 2008)

Derived from FAR 52.232-24 (Jan 1986)

(Applies to all subcontracts)

- (a) Except as expressly authorized in writing by the NREL Subcontract Administrator, this subcontract or any interest therein or claim under this subcontract shall not be assigned or transferred by the Subcontractor.
- (b) In the event of any authorization of assignment or transfer, the parties shall file written notice together with a true copy of the instrument of the assignment or transfer with the NREL Subcontract Administrator. Such assignment or transfer shall cover all amounts payable under the subcontract not already paid, shall not be made to more than one party, and shall not be subject to further assignment or transfers.
- (c) When directed by DOE, the Prime Contractor, may assign or transfer all its rights and obligations under this subcontract to DOE or its designee.

CLAUSE 2. SUBCONTRACT ISSUES AND DISPUTES (SPECIAL-EDUCATIONAL INSTITUTIONS) (JUN 2011)

Derived from NREL 08.100-01

(Applies to all subcontracts.)

- (a) It is NREL's practice to try to resolve all contractual issues by mutual agreement at the NREL Subcontract Administrator's level, without litigation. Both parties hereby agree to explore all reasonable avenues for negotiations in order to avoid a dispute. Either party may provide written notice to the other party to conduct negotiations for a period not to exceed sixty (60) calendar days. After sixty calendar days, if possibilities for negotiations have failed, either party shall have thirty (30) calendar days to request that the potential dispute be moved to Alternative Dispute Resolution (ADR). Within fifteen (15) calendar days after receiving a request to move to ADR, if ADR procedures are not acceptable to the non-moving party, a written explanation citing specific reasons for rejecting ADR as inappropriate for resolution of the dispute shall be provided to the moving party. If the parties are unable to agree on the application of ADR procedures to resolve the potential dispute or are unable to satisfactorily resolve the dispute using ADR procedures for a period not to exceed ninety (90) calendar days (or such longer period as mutually agreed in writing), the parties shall resume the formal process authorized in this clause.
- (b) The parties agree that the appropriate forum for litigation of any dispute pertaining to this subcontract shall be a court of competent jurisdiction as follows:
 - (1) Subject to paragraph (b) (2) of this clause, any such litigation shall be brought and prosecuted exclusively in Federal District Court.
 - (2) Provided, however, that in the event the requirements for jurisdiction in any Federal District Court are not present, such litigation shall be brought in a State court of competent jurisdiction.
- (c) Any substantive issue of law in such litigation shall be determined in accordance with the body of applicable Federal law relating to the interpretation and application of clauses derived from Federal Acquisition Regulations and the Department of Energy

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Acquisition Regulations that implement and supplement the FAR. If there is no applicable Federal law, the law of the State forum shall apply in the determination of such issues. Conflict of law provisions shall not determine applicable governing law. Nothing in this clause shall grant to the Subcontractor by implication any statutory rights or remedies not expressly set forth in this subcontract.

- (d) There shall be no interruption in the prosecution of the work, and the Subcontractor shall proceed diligently with the performance of those portions of the subcontract not under dispute pending final resolution of any dispute, claim, or litigation arising under or related to this subcontract between the parties hereto or between the Subcontractor and lower-tier Subcontractors or Suppliers.
- (e) The Contract Disputes Act of 1978 (41 U.S.C. Sections 601-613) shall not apply to this subcontract.
- (f) Any disputes relative to intellectual property matters will be governed by other provisions of this subcontract.

CLAUSE 3. DEFINITIONS (SPECIAL) (OCT 2009)

Derived from FAR 52.202-1 (JUL 2004) as modified by DEAR 902.200 (MAR 2002)

(Applies to all subcontracts.)

- (a) "Head of the Agency" means the Secretary, Deputy Secretary, or Under Secretary of the Department of Energy (DOE).
- (b) "Commercial component" means any component that is a commercial item.
- (c) "Commercial item (goods or services)" means—
 - (1) Any item, other than real property, that is of a type customarily used for non-governmental purposes and that—
 - (i) Has been sold, leased, or licensed to the general public; or
 - (ii) Has been offered for sale, lease, or license to the general public.
 - (2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a NREL/Government solicitation;
 - (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for—
 - (i) Modifications of a type customarily available in the commercial marketplace; or
 - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet NREL or Federal Government requirements. "Minor" modifications mean modifications that do not significantly alter the non-governmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor.

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- (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;
- (5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services—
 - (i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
 - (ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public.
- (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;
- (7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(5), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Subcontractor; or
- (8) A non-developmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and Local Governments.
- (d) “Component” means any item supplied to the Federal Government as part of an end item or of another component, except that for use in FAR 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225.11(a).
- (e) “DOE Contracting Officer” means a person with the authority to enter into, administer, and/or terminate DOE Prime Contracts and make related determinations and findings. The term includes certain authorized representatives of the DOE Contracting Officer acting within the limits of their authority as delegated by the DOE Contracting Officer.
- (f) “NREL Subcontract Administrator” means an employee of the entity that manages and operates the National Renewable Energy Laboratory (NREL) with the authority to enter into, administer, and/or terminate subcontracts and make related determinations and findings. The term includes certain authorized representatives of the NREL acting within the limits of their authority as delegated by the NREL.
- (g) “Non-developmental item” means—
 - (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or Local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
 - (2) Any item described in paragraph (g)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of NREL/Government or a procuring department or agency; or

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- (3) Any item of supply being produced that does not meet the requirements of paragraph (f)(1) or (g)(2) solely because the item is not yet in use.
- (h) Except as otherwise provided in this subcontract, the terms "subcontracts and lower-tier subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders and changes and modifications to purchase orders.
- (i) "DOE" means the Department of Energy.
- (j) "Contractor" or "DOE Prime Contractor" means the entity managing and operating the National Renewable Energy Laboratory under prime contract to the U.S. Department of Energy (DOE). The National Renewable Energy Laboratory (NREL) is a Department of Energy-owned national laboratory, managed and operated by the DOE Prime Contractor.
- (k) "DOE Directive" means DOE Orders and Notices, modifications thereto, and other forms of directives, including for purposes of this subcontract those portions of DOE's accounting and procedures handbook applicable to Contractors, issued by DOE. The term does not include temporary written instructions by the DOE Contracting Officer or the NREL Subcontract Administrator for the purpose of addressing short-term or urgent DOE and NREL concerns relating to health, safety, or the environment.

CLAUSE 4. STOP WORK ORDER (AUG 1989)

Derived from FAR 52.242-15

- (a) The NREL Subcontract Administrator may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all, or any part, of the work called for by this subcontract for a period of ninety (90) days after the order is delivered to the Subcontractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a stop-work is delivered to the Subcontractor, or within any extension of that period to which the parties shall have agreed, the NREL Subcontract Administrator shall either --
 - (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Default or the Termination clause of this subcontract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Subcontractor shall resume work. The NREL Subcontract Administrator shall make an equitable adjustment and the subcontract shall be modified, in writing, accordingly, if --
 - (1) The stop-work order results in an increase in the time required for, or in the Subcontractor's cost properly allocable to, the performance of any part of this subcontract; and
 - (2) The Subcontractor asserts its right to the adjustment within thirty (30) days after the end of the period of work stoppage; provided, that, if the NREL Subcontract Administrator decides the facts justify the action, the NREL

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Subcontract Administrator may receive and act upon the claim submitted at any time before final payment under this subcontract.

- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of NREL/Government, the NREL Subcontract Administrator shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the NREL Subcontract Administrator shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

CLAUSE 5. CHANGES-FIXED PRICE (AUG 1987) INCORPORATING ALTERNATE II (APR 1984)

Derived from FAR 52.243-1

- (a) The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
 - (1) Description of services to be performed.
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.).
 - (3) Place of performance of the services.
 - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for NREL/Government, in accordance with the drawings, designs, or specifications.
 - (5) Method of shipment or packing of supplies.
 - (6) Place of delivery.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this subcontract, whether or not changed by the order, the NREL Subcontract Administrator shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the subcontract.
- (c) The Subcontractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the NREL Subcontract Administrator decides that the facts justify it, the NREL Subcontract Administrator may receive and act upon a proposal submitted before final payment of the contract.
- (d) If the Subcontractor's proposal includes the cost of property made obsolete or excess by the change, the NREL Subcontract Administrator shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Subcontractor from proceeding with the contract as changed.

CLAUSE 6. PROPERTY (SPECIAL-SOLAR DECATHLON) (AUG 2009)

- (a) Furnishing of Government property.
NREL/Government reserves the right to furnish any property or services required for the performance of the work under this subcontract.

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- (b) Title to Government property.
Except as otherwise provided by the NREL Subcontract Administrator, title to all Government property (materials, equipment, supplies, and tangible personal property of every kind and description) provided to the Subcontractor under this subcontract shall remain with the Government.
 - (1) Property furnished by NREL/Government under this subcontract are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty, including Subcontractor property.
- (c) Identification.
To a reasonable extent, the Subcontractor shall segregate Government property in such a way as to permit easy identification of the Government property to be returned to the Government upon completion of this subcontract.
- (d) Disposition.
Upon completion or termination of this subcontract, the Government through NREL shall regain possession of the Government property.
- (e) Protection of Government property.
 - (1) The Subcontractor shall take all reasonable precautions in accordance with sound business practice or as may be directed by the NREL Subcontract Administrator, to safeguard and protect Government property in, or in close proximity to, the Subcontractor's possession, custody or control. In addition, the Subcontractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of Government property.
- (f) Risk of loss of Government property.
 - (1) The Subcontractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:
 - (i) Willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel; or
 - (ii) Failure of the Subcontractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the NREL Subcontract Administrator to safeguard Government property.
 - (2) The term "Subcontractor's managerial personnel," as used in this clause, means the Subcontractor's directors, officers, and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of:
 - (i) The Subcontractor's business; or
 - (ii) The Subcontractor's operations at any one facility or separate location at which this subcontract is being performed; or
 - (3) If, after an initial review of the facts, the NREL Subcontract Administrator informs the Subcontractor that there is reason to believe that the loss, destruction of, or damage to the Government property results from conduct falling within one of the categories set forth in (f)(1), the burden of proof shall be upon the Subcontractor to show that the Subcontractor should not be

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required to compensate NREL/Government for the loss, destruction, or damage.

- (4) In the event that the Subcontractor is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the Subcontractor's compensation to NREL/Government shall be determined as follows:
 - (i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property.
 - (ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property.
- (g) Steps to be taken in event of loss.
In the event of any damage, destruction, or loss to Government property, the Subcontractor:
 - (1) Shall immediately inform the NREL Subcontract Administrator of the occasion and extent thereof; and
 - (2) Shall take all reasonable steps to protect the property remaining.
- (h) Government property shall be used only for the performance of this subcontract.

CLAUSE 7. TERMINATION FOR CONVENIENCE OF NREL/GOVERNMENT FIXED PRICE (SHORT FORM) (APR 1984)

Derived from FAR 52.249-1

(Applies to fixed price subcontracts of \$100,000 or less, except subcontracts for research and development work with educational or nonprofit institutions and subcontracts for architect-engineer services.)

The NREL Subcontract Administrator, by written notice, may terminate this subcontract, in whole or in part, when it is in NREL/Government's interest. If this subcontract is terminated, the rights, duties, and obligations of the parties, including compensation to the Subcontractor, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this subcontract.

CLAUSE 8. WORKER SAFETY AND HEALTH REQUIREMENTS (SPECIAL-OFFSITE ES&H JURISDICTION) (MAY 2011)

Derived from NREL 09.100-02

(Applies to all subcontracts where the Subcontractor or lower-tier Subcontractors, and their employees, officers, agents, or other persons representing the Subcontractor, will perform work on NREL-operated facilities or government-owned or -leased properties.)

- (a) **THE SUBCONTRACTOR SHALL BE RESPONSIBLE TO ENSURE THAT ALL WORK PERFORMED UNDER THIS SUBCONTRACT (INCLUSIVE OF LOWER-TIER SUBCONTRACTORS) IS PERFORMED IN ACCORDANCE WITH THE DEPARTMENT OF ENERGY'S "WORKER SAFETY AND HEALTH" RULE CODIFIED AT 10 CFR 851 AND APPLICABLE REGULATIONS OF ANY OTHER FEDERAL AND NON-FEDERAL AGENCIES EXERTING JURISDICTION OVER ES&H**

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MATTERS UNDER THIS SUBCONTRACT. THE SUBCONTRACTOR SHALL ENSURE THAT ALL WORK IS PERFORMED IN ACCORDANCE WITH NREL'S DOE-APPROVED SAFETY MANAGEMENT SYSTEM. THE SUBCONTRACTOR IS SUBJECT TO ALL APPLICABLE PROCEDURES FOR INVESTIGATING VIOLATIONS, ENFORCING COMPLIANCE WITH REQUIREMENTS, AND ASSESSING CIVIL PENALTIES OR FEE REDUCTIONS FOR VIOLATIONS UNDER DOE'S "WORKER SAFETY AND HEALTH" RULE AND APPLICABLE REGULATIONS OF ANY OTHER FEDERAL AND NON-FEDERAL AGENCIES EXERTING JURISDICTION OVER ES&H MATTERS UNDER THIS SUBCONTRACT. WHEN THE DOE "WORKER SAFETY AND HEALTH REQUIREMENTS" AND OTHER AGENCIES' APPLICABLE SAFETY REGULATIONS ARE MADE APPLICABLE TO THE WORK TO BE PERFORMED UNDER AN NREL SUBCONTRACT, THE SUBCONTRACTOR SHALL ALSO COMPLY WITH THE CLAUSE "INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION" (DEAR 970.5223-1).

- (b) The Subcontractor shall have a structured approach to its worker safety and health program that at a minimum meets the mandatory requirements specified in Appendix A of 10 CFR 851 for implementing any of the following functional areas applicable to the work to be performed: (1) construction safety; (2) fire protection; (3) firearms safety; (4) explosives safety; (5) pressure safety; (6) electrical safety; (7) industrial hygiene; (8) occupational medicine; (9) biological safety; and (10) motor vehicle safety.
- (c) The Subcontractor shall be responsible for full compliance (inclusive of its lower-tier subcontractors) with all applicable worker safety and health standards of DOE and NREL to provide subcontract work that is free from recognized hazards that are causing or have the potential to cause death or serious physical harm to workers. The Subcontractor shall comply with all Safety and Health Standards applicable to the hazards of the work to be performed, including but not limited to: (a) 29 CFR 1904 Recording and Reporting Occupational Injuries and Illnesses; (b) 29 CFR 1910 Occupational Safety and Health Standards and ACGIH Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices; (c) 29 CFR 1926 Safety and Health Regulations for Construction; (d) ANSI Z88.2 Respiratory Protection; (e) ANSI Z136.1 Safe Use of Lasers; (f) ANSI Z49.1 Welding, Cutting, and Allied Processes; (g) NFPA 70 National Electrical Code; and (h) NFPA 70E Standard for Electrical Safety in the Workplace. Nothing in this Paragraph (c) shall be construed as relieving the Subcontractor from complying with any additional specific safety and health requirements necessary to protect the safety and health of workers.
- (d) In conforming to the worker safety and health requirements identified the Subcontractor shall provide at least worker safety and health supervision in the following areas: (1) management responsibilities; (2) worker rights and responsibilities; (3) hazard identification and assessment; (4) hazard prevention and abatement; (5) training and information; and (6) recordkeeping and reporting.
- (e) NREL and federal and non-federal agencies exerting jurisdiction over ES&H matters under this subcontract may inspect the Subcontractor's operation as work proceeds, from time to time, for compliance with worker safety and health requirements contained in this subcontract. The NREL Subcontract Administrator shall direct the Subcontractor to make the necessary corrections commensurate with deficiencies found. The Subcontractor shall make these corrections at no additional expense to NREL. The Subcontractor shall participate in the fact finding investigations of NREL

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- and federal and non-federal agencies exerting ES&H jurisdiction regarding accidents, injuries, occurrences, and near-misses occurring under this subcontract. The Subcontractor shall participate in fact-finding investigations at no additional expense to NREL. The Subcontractor shall remove from the work site any employee that NREL identifies in writing as unsafe, incompetent, careless, or otherwise objectionable. The Subcontractor shall replace the removed employee at no additional expense to NREL. Any NREL representatives, NREL subcontractors, DOE representatives, and other federal and non-federal agency representatives including but not limited to the NREL Technical Monitor or Project Manager, the DOE Federal Project Director, the NREL Subcontract Administrator, other federal and nonfederal agency safety officers exerting ES&H jurisdiction, and NREL and DOE EHSS&Q representatives have authority to stop work if unsafe conditions exist. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of or in connection with any unsafe conditions work stoppage. The Subcontractor's violation, refusal, or failure to abate violations, or applicable deficiencies may be justification for subcontract termination in accordance with the termination or default clauses of the subcontract terms and conditions.
- (f) The Subcontractor shall complete and post the Form DOE-F-5480.4 at the work site. The Subcontractor shall make available Form DOE-F-5480.4, "[Sub]Contractor Employee Occupational Safety or Health Complaint" to its employees. The Subcontractor shall complete and post additional Safety and Health forms as required under applicable regulations of any other federal and non-federal agencies exerting jurisdiction over ES&H matters under this subcontract. The Subcontractor shall maintain specific records and submit the information covering experience of both its direct employees and that of its lower-tier subcontractors. The Subcontractor shall immediately provide to the NREL Technical Monitor or Project Manager and the NREL Subcontract Administrator notification of any injury or property damage incident and provide sufficient information necessary for NREL to complete DOE-F-5484.3 "The Individual Accident/Incident Report." The Subcontractor shall immediately provide to the appropriate agencies' representatives notification of any injury or property damage incident and provide sufficient information as required under the regulations of any other federal and non-federal agencies exerting jurisdiction over ES&H matters under this subcontract. Such information shall be submitted, as appropriate, for any period of time prior to final payment and closeout of this subcontract.

CLAUSE 9. INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)

Derived from DEAR 970.5223-1 (FD)

- (a) For the purposes of this clause,
- (1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and
 - (2) Employees include lower-tier subcontractor employees.
- (b) In performing work under this subcontract, the Subcontractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The

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Subcontractor shall exercise a degree of care commensurate with the work and the associated hazards. The Subcontractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the Subcontractor's work planning and execution processes. The Subcontractor shall, in the performance of work, ensure that:

- (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Subcontractor and lower-tier subcontractor employees managing or supervising employees performing work.
 - (2) Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organizational levels.
 - (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
 - (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
 - (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
 - (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
 - (7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by NREL/Government and the Subcontractor. These agreed-upon conditions and requirements are requirements of the subcontract and binding upon the Subcontractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.
- (c) The Subcontractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (B) of this clause at a minimum. Documentation of the System shall describe how the Subcontractor will:
- (1) Define the scope of work;
 - (2) Identify and analyze hazards associated with the work;
 - (3) Develop and implement hazard controls;
 - (4) Perform work within controls; and
 - (5) Provide feedback on adequacy of controls and continue to improve safety management.
- (d) The System shall describe how the Subcontractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to NREL/DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the Subcontractor will measure system effectiveness.
- (e) The Subcontractor shall submit to the NREL Subcontract Administrator documentation of its System for review and approval. Dates for submittal,

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discussions, and revisions to the System will be established by the NREL Subcontract Administrator. Guidance on the preparation, content, review, and approval of the System will be provided by the NREL Subcontract Administrator. On an annual basis, the Subcontractor shall review and update, for NREL's approval, its safety performance objectives, performance measures, and commitments consistent with and in response to NREL/DOE program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the Subcontractor's business processes for work planning, budgeting, authorization, execution, and change control.

- (f) The Subcontractor shall comply with, and assist NREL/DOE in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of NREL's Prime Contract entitled "Laws, Regulations, and DOE Directives." The Subcontractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this subcontract.
- (g) The Subcontractor shall promptly evaluate and resolve any noncompliance with the ES&H requirements and the System. If the Subcontractor fails to provide resolution or if, at any time, the Subcontractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the NREL Subcontract Administrator may issue an order stopping work in whole or in part. Any stop work order issued by the NREL Subcontract Administrator under this clause (or issued by the Subcontractor to a lower-tier subcontractor in accordance with paragraph (I) of this clause) shall be without prejudice to any other legal or contractual rights of NREL/Government. In the event that the NREL Subcontract Administrator issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the NREL Subcontract Administrator. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
- (h) Regardless of the performer of the work, the Subcontractor is responsible for compliance with the ES&H requirements applicable to this subcontract. The Subcontractor is responsible for flowing down the ES&H requirements applicable to this subcontract to subcontracts at any tier to the extent necessary to ensure the Subcontractor's compliance with the requirements.
- (i) The Subcontractor shall include a clause substantially the same as this clause in lower-tier subcontracts involving complex or hazardous work on site at a Government-owned or-leased facility. Such lower-tier subcontracts shall provide for the right to stop work under the conditions described in paragraph (G) of this clause. Depending on the complexity and hazards associated with the work, the Subcontractor may choose not to require the lower-tier subcontractor to submit a Safety Management System for the Subcontractor's review and approval.

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CLAUSE 10. AUDIT AND RECORDS—NEGOTIATION (MAR 2009) WITH ALTERNATE II (APR 1998)

Derived from FAR 52.215-2 (FD)

- (a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are written form, in the form of computer data, or in any other form.
- (b) Examination of Costs.
If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable subcontract, or any combination of these, the Subcontractor shall maintain and the DOE Contracting Officer, or an authorized representative of the DOE Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this subcontract. This right of examination shall include inspection at all reasonable times of the Subcontractor's plants, or part of them, engaged in performing the subcontract.
- (c) Cost or pricing data.
If the Subcontractor has been required to submit cost or pricing data in connection with any pricing action relating to this subcontract, the DOE Contracting Officer, or an authorized representative of the DOE Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Subcontractor's records, including computation and projections, related to—
 - (1) The proposal for the subcontract, lower-tier subcontract, or modification;
 - (2) The discussions conducted on the proposal(s), including those related to negotiating;
 - (3) Pricing of the subcontract, lower-tier subcontract, or modification; or
 - (4) Performance of this subcontract, lower-tier subcontract, or modification.
- (d) Comptroller General.
 - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this subcontract or a lower-tier subcontract hereunder.
 - (2) This paragraph may not be construed to require the Subcontractor or lower-tier Subcontractor to create or maintain any record that the Subcontractor or lower-tier Subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) Reports.
If the Subcontractor is required to furnish cost, funding, or performance reports, the DOE Contracting Officer or any authorized representative of the DOE Contracting Officer, shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating—
 - (1) The effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objectives of these reports; and
 - (2) The data reported.
- (f) Availability.
The Subcontractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until three (3) years after

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final payment under this subcontract or for any shorter period specified in Subpart 4.7, Subcontractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this subcontract. In addition—

- (1) If this subcontract is completely or partially terminated, the records relating to the work terminated shall be made available for three (3) years after any resulting final termination settlement; and
 - (2) Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this subcontract shall be made available until such appeals, litigation, or claims are finally resolved.
- (g) The Subcontractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all lower-tier subcontracts under this subcontract that exceed the simplified acquisition threshold, and—
- (1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
 - (2) For which cost or pricing data are required; or
 - (3) Require the lower-tier Subcontractor to furnish reports as discussed in paragraph (e) of this clause.
- The clause may be altered only as necessary to identify properly the contracting parties and the DOE Contracting Officer or NREL Subcontract Administrator under the Government prime contract.
- (h) The provisions of OMB Circular No. A-133, "Audits of States, Local Governments, and Non-profit Organizations," apply to this subcontract.

CLAUSE 11. PERMITS AND RESPONSIBILITIES (NOV 1991)

Derived from FAR 52.236-7

The Subcontractor shall, without additional expense to NREL, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Subcontractor shall also be responsible for all damages to persons or property that occur as a result of the Subcontractor's fault or negligence. The Subcontractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the subcontract.

CLAUSE 12. PUBLIC AFFAIRS (SPECIAL-EDUCATIONAL INSTITUTIONS) (JUN 2011)

Derived from DEAR 952.204-75

(Applies to subcontracts where the Subcontractor is required to release unclassified information related to NREL/DOE policies, programs, and activities.)

- (a) The Subcontractor must cooperate with NREL in releasing general, non-technical information concerning the existence of this subcontract, the identity of the parties, and the character and scope of the Subcontractor's effort to the public and news media, including but not limited to NREL/DOE policies, programs, and activities. The responsibilities under this clause must be accomplished through coordination with

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- the NREL Subcontract Administrator and appropriate NREL public affairs personnel prior to the release of general, non-technical information.
- (b) The Subcontractor is responsible for the development, planning, and coordination of proactive approaches for the timely dissemination of general, non-technical information regarding NREL/DOE activities onsite and offsite, including, but not limited to, operations and programs. Proactive public affairs programs may utilize a variety of communication media, including public workshops, meetings or hearings, open houses, newsletters, press releases, conferences, audio/visual presentations, speeches, forums, tours, and other appropriate stakeholder interactions.
 - (c) The Subcontractor's internal procedures must ensure that all releases of general, non-technical information to the public and news media are coordinated through, and approved by, a management official at an appropriate level within the Subcontractor's organization.
 - (d) The Subcontractor must comply with the NREL Subcontract Administrator's direction for obtaining advance clearances on oral, written, and audio/visual informational material prepared for public dissemination or use.
 - (e) Unless prohibited by law, the Subcontractor must notify the NREL Subcontract Administrator and appropriate NREL public affairs personnel of communications or contacts with Members of Congress relating to the effort performed under the subcontract.
 - (f) The Subcontractor must notify the NREL Subcontract Administrator and appropriate NREL public affairs personnel of activities or situations that may attract regional or national news media attention and of non-routine inquiries from national news media relating to the effort performed under the subcontract.
 - (g) In releases of general, non-technical information to the public and news media, the Subcontractor must fully and accurately identify the Subcontractor's relationship to NREL/DOE and fully and accurately credit NREL/DOE for its role in funding programs and projects resulting in scientific, technical, and other achievements.
 - (h) The release or publication of information of a scientific or technical nature generated under this subcontract is governed by the provisions of Appendix C of this subcontract.

CLAUSE 13. OTHER CONTRACTS OR SUBCONTRACTS (APR 1984)

Derived from FAR 52.236-8

The Subcontractor shall, without additional expense to NREL, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Subcontractor shall also be responsible for all damages to persons or property that occur as a result of the Subcontractor's fault or negligence. The Subcontractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the subcontract.

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CLAUSE 14. CLEAN UP (APR 1984)

Derived from FAR 52.236-12

The Subcontractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Subcontractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of NREL/Government. Upon completing the work, the Subcontractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the NREL Subcontract Administrator.